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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 YONG CHA LEE,

11 Petitioner,

12 v.

13 UNITED STATES OF AMERICA,

14 Respondent.
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CASE NO. 3:19-cv-5287-BHS-JRC

ORDER TO SHOW CAUSE OR
AMEND PETITION

16 Petitioner, proceeding *pro se*, initiated this matter on April 15, 2019 by filing a “motion
17 for review of sentence” under 28 U.S.C. § 2241, which the Clerk docketed as a petition for
18 habeas corpus. *See* Dkt. 1. The District Court has referred this matter to the undersigned. *See*
19 Dkt. 2.

20 Having reviewed the petition, Court is unable to determine whether petitioner intends to
21 bring her petition under 28 U.S.C. §§ 2241 or 2255. Therefore, the Court directs petitioner to
22 file an amended petition on the appropriate form by June 21, 2019 and to cure the deficiencies
23 identified below.
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1 **BACKGROUND**

2 Petitioner is incarcerated in a federal institution in Alabama, where she states that she is
3 serving a 72-month sentence imposed by the Honorable Robert J. Bryan, a District Judge for the
4 Western District of Washington, Tacoma, for “conspiracy to distribute a listed chemical in
5 violation of 21 [U.S.C. §§] 841(c)(2) and 846.” *See* Dkt. 3, at 2, 5. She appears to argue that the
6 District Court should have exercised its discretion and imposed a shorter sentence on the basis
7 that she cooperated with a government investigation. *See* Dkt. 3, at 4.

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9 **DISCUSSION**

10 Petitioner requests relief under 28 U.S.C. § 2241, apparently in the form of a shortened
11 sentence. *See* Dkt. 3, at 1, 5. This appears to be the type of challenge to the legality of a
12 sentence that “must be filed under [28 U.S.C.] § 2255 in the sentencing court,” before the
13 sentencing judge, in contrast to a challenge to “the manner, location, or conditions of a
14 sentence’s execution,” which “must be brought pursuant to § 2241 in the custodial court.”
15 *Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir. 2000) (per curiam); *see* Rules Governing
16 Section § 2255 Proceedings, Rule 4(a).

17 However, although motions challenging a sentence’s legality should generally be brought
18 under § 2255, that statute’s saving clause provides that in limited circumstances, such a
19 challenge could be brought under § 2241: “a federal prisoner may file a habeas corpus petition
20 pursuant to § 2241 to contest the legality of a sentence where [her] remedy under § 2255 is
21 ‘inadequate or ineffective to test the legality of [her] detention.’” *Hernandez*, 204 F.3d at 864–
22 65 (quoting 28 U.S.C. § 2255). In the Ninth Circuit, the § 2255 saving clause applies “where a
23 petitioner ‘(1) makes a claim of actual innocence, and (2) has not had an unobstructed procedural
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1 shot at presenting that claim.”” *Alaimalo v. United States*, 645 F.3d 1042, 1047 (9th Cir. 2011)
2 (quoting *Stephens v. Herrera*, 464 F.3d 895, 898 (9th Cir. 2006) (internal quotation marks
3 omitted)).

4 Petitioner neither alleges that she is actually innocent nor attempts to show that she has
5 not had an “unobstructed procedural shot” at presenting her claim regarding the length of her
6 sentence. Therefore, petitioner has not shown that her petition is one properly brought under §
7 2241, rather than § 2255. However, as noted above, petitioner states that she seeks relief under §
8 2241—thus it is unclear how petitioner wishes to proceed.

9 The Ninth Circuit has made clear that “before proceeding to any other issue,” the Court
10 “must first determine whether a habeas petition is filed pursuant to § 2241 or § 2255.”
11 *Hernandez*, 204 F.3d at 865. Because it is unclear from the petition whether petitioner wishes to
12 proceed under § 2241 or § 2255, the Court finds that petitioner must amend her petition before a
13 determination can be made regarding the statute under which petitioner seeks relief and the
14 appropriate forum for her claims. This petition is properly before District Judge Robert J. Bryan
15 in the Western District of Washington, Tacoma, if brought under § 2255, and before the
16 Northern District of Alabama, if brought under § 2241; the Court will consider recommending
17 transfer of this case to the appropriate court and/or district once petitioner has filed her amended
18 petition.

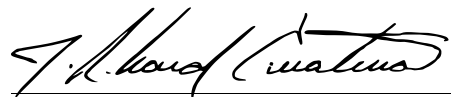
19 Moreover, the Court notes that if petitioner wishes to proceed under § 2241, she has
20 incorrectly captioned her case—the correct respondent is petitioner’s custodian. *See Rumsfeld v.*
21 *Padilla*, 542 U.S. 426, 434 (2004) (quoting 28 U.S.C. § 2242). If petitioner wishes to proceed
22 under § 2255, she has correctly captioned this matter. *See Form Motion under 28 U.S.C. §*
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1 2255.¹ If petitioner wishes to proceed under § 2255, she must further show that her petition
2 complies with the limitations period outlined in § 2255(f).

3 For these reasons, the undersigned **ORDERS** that if petitioner wishes to pursue this
4 matter, she clarify whether she intends to file a § 2241 or § 2255 action and file an amended
5 petition on or before **June 21, 2019**. The amended petition shall be legibly rewritten or retyped
6 in its entirety, it should be an original and not a copy, it should contain the same case number,
7 and it may not incorporate any part of the original petition by reference. The amended petition
8 will operate as a complete substitute for the original petition and not a supplement. The
9 amended petition must be on a form provided by this Court.

10 If petitioner fails to adequately address the issues raised herein and to file an amended
11 petition on or before June 21, 2019, the undersigned may recommend dismissal of this action.
12 The Clerk shall provide petitioner with the forms for relief under § 2241 and § 2255 and with a
13 copy of this order.

14 Dated this 23rd day of May, 2019.

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16 J. Richard Creatura
17 United States Magistrate Judge
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24 ¹ Available at <https://www.uscourts.gov/forms/civil-forms/motion-vacateset-aside-sentence-motion-under-28-usc-ss-2255>.